

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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National Labor Relations Board,

Petitioner - Cross - Respondent

v.

Lead Case No.: 19-3699  
Member Case No.: 19-3925

Laborers' International Union of North America,  
Local Union No. 91,

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Respondent - Cross - Petitioner.

**ANSWER TO APPLICATION FOR ENFORCEMENT**

The Respondent / Cross Petitioner, Laborers' International Union of North America, Local Union No. 91 (hereinafter "Local 91"), by and through its attorneys, Lipsitz Green Scime Cambia LLP, Robert L. Boreanaz, Esq. of counsel, as for its answer to: I. the allegations set forth in the Application for Summary Entry of a Judgment Enforcing an Order of the National Labor Relations Board filed by Petitioner / Cross Respondent, National Labor Relations Board (hereinafter "the Board") entered by the Clerk on November 8, 2019 (hereinafter the "Application"), and II. the allegations set forth in the Board's Agency Appeal Pre-Argument (Form C-A) and Addendums thereto (hereinafter "Form C-A & Addendums") entered by the Clerk on November 13, 2019, hereby states as follows:

### **I. Answer to Allegations in Board's Application**

1. With respect to the allegations in subsection A., Local 91 admits that this Court's jurisdiction and venue is proper in the Second Circuit.

2. Local 91 admits the allegations contained in subsection B. ¶1.

3. With respect to the allegations in subsection B. ¶2, Local 91 denies that the hearing in this matter was held before Administrative Law Judge Benjamin W. Green (the "ALJ Green") and that ALJ Green issued his decision on August 26, 2019. Further, Local 91 denies that it violated the National Labor Relations Act (hereinafter "the Act"), as alleged in an ALJ Green's Decision / Board's Order in which the Board seeks to enforce, further refers to the document referenced therein for its content and legal effect, and otherwise deny the allegations therein.

4. Local 91 admits the allegations contained in subsection B. ¶3.

5. With respect to the allegations in subsection B. ¶4, Local 91 refers to the statutes, rules, and regulations, referenced therein for their content and legal effect, and otherwise deny the allegations therein as calling for a legal conclusion.

6. Local 91 denies the allegations contained in subsection B. ¶5.

7. Local 91 admits in part and denies in part the allegations contained in subsection B. ¶6. Local 91 denies there was an absence of exceptions. Local 91 admits that on October 7, 2019 the Board issued an Order and refers to the contents

of that Order for its content and legal effect. Local 91 admits that on October 21, 2019 issued a Corrected Order and refers to the contents of that Corrected Order for its content and legal effect.

8. With respect to the Allegations contained in subsection C., Local 91 denies it failed to file exceptions to the Board's Order or that the Board is entitled to summary entry of a judgment enforcing its order.

## **II. Answer to Board's Form C-A & Addendums**

9. Local 91 admits that the Board issued its Order in Board Case No. 03-CB-225477 on October 21, 2019, (hereinafter "Board Order").

10. Local 91 admits that Court's jurisdiction and venue is proper in the Second Circuit.

11. Local 91 admits, with clarification, that on November 15, 2018 a National Labor Relations Board complaint was filed against it.

12. Local 91 admits, with clarification, that a hearing was held before Administrative Law Judge Keltner W. Locke (hereinafter, the "ALJ Locke") on June 25, 2019, August 6, 2019, and August 9, 2019.

13. Local 91 admits that the ALJ Locke issued a Decision on August 26, 2019.

14. Local 91 refers to the ALJ Locke's August 26, 2019 Decision for its contents and legal effect.

15. Local 91 denies that it violated the National Labor Relations Act (hereinafter “the Act”), as alleged in the ALJ Locke’s decision.

16. Local 91 admits that the Board transferred the proceedings to itself.

17. Local 91 admits that the Board provided notification of the time to file exceptions.

18. Local 91 denies that it did not file exceptions with the Board.

19. Local 91 admits that the Board issued an order dated October 7, 2019 adopting the ALJ’s Decision referenced as being dated August 16, 2019.

20. Local 91 admits that the Board issued a corrected order dated October 21, 2019 adopting the ALJ’s Decision referenced as being dated August 26, 2019.

21. Local 91 maintains the Board’s Order should not be enforced because the ALJ Decision is not supported by substantial evidence in the record as a whole and is contrary to applicable law.

22. Local 91 denies any and all other allegations and findings set forth in the Board’s Order, in which the Board seeks to enforce.

23. Local 91 denies that the Board is otherwise entitled to enforcement of its Order.

24. Local 91 denies that its challenges to the Board’s Order are jurisdictionally barred under Section 10(e) of the National Labor Relations Act.

WHEREFORE, based on the foregoing deficiencies in the Board's Order, Local 91 respectfully requests that this Court deny the Board's Application for Summary Entry of a Judgment Enforcing an Order of the National Labor Relations Board, and grant such other and further relief as this Court may find just and proper.

Dated: November 27, 2019  
Buffalo, New York

BY: /s/ Robert L. Boreanaz  
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 27, 2019, I electronically filed the RESPONDENT / CROSS PETITIONER'S ANSWER TO APPLICATION FOR ENFORCEMENT with Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the CM/ECF system. I further certify that the following participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system:

Lead Counsel for Petitioner

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Dated: November 27, 2019  
Buffalo, New York

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